

SENATE BILL No. 589

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-30.

Synopsis: Economic development. Requires the department of state revenue to provide an annual report to the general assembly that describes the amount of uncollected revenues for certain development assistance tax credits and deductions. Requires each county auditor to provide annually to the state board of tax commissioners certain information concerning development assistance property tax deductions and credits claimed during the preceding year. Requires the department of commerce to adopt a standardized information form that must be completed by any person applying for development assistance under any program or fund operated by or administered by the state or a political subdivision. Requires an entity considering an application
(Continued next page)

Effective: July 1, 1999.

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January 21, 1999, read first time and referred to Committee on Planning and Economic Development.



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for development assistance to deny the application unless the applicant proposes to meet certain conditions concerning wages that will be paid to the applicant's employees. Requires a recipient of development assistance to pay back a part of the development assistance if the recipient does not meet its wage and employment goals for a year. Provides that development assistance is void and must be paid back if the recipient fails to meet the wage and employment goals for three consecutive years. Requires granting bodies that approve development assistance to prepare annual progress reports concerning recipients of development assistance.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 589

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-30 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 30. Development Assistance Disclosure and Taxpayer**
5 **Protection**

6 **Sec. 1. The general assembly finds the following:**

7 (1) **Despite an increase in spending for economic development,**
8 **the wage levels of Indiana's average working families have**
9 **suffered years of decline and stagnation.**

10 (2) **Low wage jobs often impose hidden costs upon Indiana**
11 **citizens in the form of costs of assistance that must be**
12 **provided to the working poor and their families.**

13 (3) **In order to ensure that Indiana's economic development**
14 **resources are achieving the desired effect of raising living**
15 **standards for Indiana's working families, it is necessary to**



collect and analyze additional information and to enact certain safeguards concerning development assistance programs and tax incentives.

Sec. 2. As used in this chapter, "controlling entity" means:

(1) a person or legal entity, an organization, a business, a partnership, a group, or a corporate entity recognized by law; or

(2) a combination of entities described in subdivision (1); that possesses, owns, or controls an interest of at least ten percent (10%) of another entity if that interest is greater than the interest possessed, owned, or controlled by any other person, entity, organization, business, partnership, or group.

Sec. 3. As used in this chapter, "date of assistance" means the date on which a granting body first provides development assistance to a recipient.

Sec. 4. As used in this chapter, "department" means the department of commerce.

Sec. 5. (a) As used in this chapter, "development assistance" means any form of public assistance made by the state or a political subdivision for the purpose of stimulating economic development of a specific corporation, business, industry, geographic area, or part of Indiana's economy.

(b) The term includes the following:

(1) Tax deductions, including deductions under IC 6-1.1-12.1.

(2) Tax credits, including tax credits under IC 6-3.1-4.

(3) Tax exemptions.

(4) Training grants, including grants provided by the department of workforce development and grants or other assistance under the training 2000 program established by IC 4-4-4.6.

(5) Loans and loan guarantees.

(6) Tax increment financing.

(7) Grants, including research and development grants.

(8) Fee waivers.

(9) Land price subsidies.

(10) Infrastructure, the principal beneficiary of which is a single business or defined group of businesses at the time the infrastructure is built or improved.

(11) Matching funds.

(12) Industrial development bonds.

Sec. 6. As used in this chapter, "full-time job" means a job in which an employee works for a recipient for at least thirty-five (35)



1 hours each week.

2 Sec. 7. As used in this chapter, "granting body" means the state
3 or a political subdivision that provides development assistance.

4 Sec. 8. As used in this chapter, "in effect" means a calendar year
5 within the duration of any development assistance. The term
6 includes the duration of any loan, loan guarantee, tax deduction,
7 tax credit or tax credit carryforward, or tax increment financing.
8 For purposes of development assistance, such as a grant or land
9 price subsidy, that is provided only one (1) time, the term "in
10 effect" means the period ending five (5) years from the date the
11 assistance is provided.

12 Sec. 9. As used in this chapter, "part-time job" means a job in
13 which an employee works for the recipient for less than thirty-five
14 (35) hours each week.

15 Sec. 10. As used in this chapter, "specific project site" means a
16 distinct operational unit to which any development assistance is
17 applied.

18 Sec. 11. As used in this chapter, "temporary job" means a job
19 in which an employee is hired for a specific time or season.

20 Sec. 12. As used in this chapter, "value of assistance" means the
21 face value of all forms of development assistance provided to a
22 recipient.

23 Sec. 13. (a) Before October 1 of each year, the department of
24 state revenue shall provide a detailed tax expenditure report to the
25 general assembly. The tax expenditure report must:

26 (1) be derived from state tax returns filed during the
27 preceding calendar year; and

28 (2) include at least the following information:

29 (A) The amount of tax expenditures made by the state, in
30 the form of uncollected revenues, for each specific tax
31 credit or tax deduction that is:

32 (i) provided to a taxpayer by the state; and

33 (ii) considered development assistance for purposes of
34 this chapter.

35 (B) An itemized listing for each of the tax expenditures
36 described in subdivision (2)(A) of:

37 (i) each taxpayer that claimed a credit or deduction
38 described in subdivision (2)(A); and

39 (ii) the specific dollar amount of the credit or deduction
40 provided to the taxpayer for the year.

41 (C) The following additional information:

42 (i) The name of each taxpayer receiving a credit or



deduction described in subdivision (2)(A) and the name and address of the controlling entity of the taxpayer.

(ii) The address and description of any property for which a credit or deduction described in subdivision (2)(A) is received.

(iii) The date upon which a credit or deduction described in subdivision (2)(A) first took effect.

(iv) The date upon which a credit or deduction described in subdivision (2)(A) is scheduled to expire.

(v) The estimated or scheduled amount of any credit or deduction described in subdivision (2)(A) for the period between the date the credit or deduction took effect and the date the credit or deduction is scheduled to expire.

(vi) The tax revenue foregone for the year as a result of each specific credit or deduction described in subdivision (2)(A).

(b) The department of state revenue shall compile and publish all data in the report required by this section in both written and electronic form.

Sec. 14. (a) Each county auditor must before April 1 of a year provide to the state board of tax commissioners the following information concerning property tax deductions and credits claimed during the preceding year for property located in the county:

(1) The name and address of each taxpayer receiving a deduction or credit that is considered development assistance for purposes of this chapter and the name and address of the controlling entity of the taxpayer.

(2) The address and description of the property for which a credit or deduction described in subdivision (1) is received.

(3) The date upon which a deduction or credit described in subdivision (1) took effect.

(4) The date upon which a deduction or credit described in subdivision (1) is scheduled to expire.

(5) The estimated or scheduled amount of any deduction or credit described in subdivision (1) for the period between the date the deduction or credit took effect and the date the deduction or credit is scheduled to expire.

(6) The property tax revenue foregone for the year as a result of each specific deduction or credit described in subdivision (1).

(7) A compilation and summary of the total property tax



revenue foregone as a result of all deductions and credits described in subdivision (1), including a summary of foregone property tax revenue for each type of deduction or credit.

(b) The state board of tax commissioners shall adopt a standardized disclosure form for use by county auditors under this section.

(c) The state board of tax commissioners shall compile and publish all data in the report required by this section in both written and electronic form.

Sec. 15. (a) If a county auditor does not provide the information required under section 14 of this chapter before April 1 of a year, the state board of tax commissioners shall before May 15 of the year notify the department of the county auditor's failure to provide the required information.

(b) Not more than three (3) days after receiving notice under this section, the department:

(1) shall suspend any current development assistance activities under its control in the county; and

(2) may not complete any current development assistance in the county or provide any additional development assistance in the county;

until the department receives notice from the state board of tax commissioners that the county auditor has provided the information required by section 14 of this chapter.

Sec. 16. (a) The department shall, before January 1, 2000, adopt a standardized information form that must be completed by a person applying for development assistance under a program or fund operated by or administered by the state or a political subdivision of the state.

(b) The information form under this section must require at least the following:

(1) An application tracking number that is specific to each granting body and each application for development assistance.

(2) The name, street and mailing address, phone number, and executive of the granting body.

(3) The name, street and mailing address, phone number, and principal officers of the controlling entity of the applicant for development assistance.

(4) The name, street and mailing address, phone number, four-digit standard industrial classification (SIC) number, and chief officer of the applicant for development assistance



at any specific project site for which development assistance is sought.

(5) The total number of the applicant's full-time employees, part-time employees, and temporary employees who work at a specific project site on the date of the application.

(6) The total number of full-time employees, part-time employees, and temporary employees who are employed in Indiana by the applicant's controlling entity or any subsidiary of the controlling entity on December 31 of the calendar year preceding the date of the applicant's application.

(7) The type and value of the development assistance for which the applicant is applying.

(8) The total number of new full-time jobs, part-time jobs, and temporary jobs that the applicant estimates will be created by the development assistance.

(9) The average hourly wage that the applicant will pay to full-time employees, part-time employees, and temporary employees described in subdivision (8) during the first calendar year after those employees are hired. For purposes of this subdivision, the applicant must estimate the number of full-time employees, part-time employees, and temporary employees to which the applicant will pay the following wages:

(A) Less than six dollars (\$6) per hour.

(B) At least six dollars (\$6) per hour but less than seven dollars (\$7) per hour.

(C) At least seven dollars (\$7) per hour but less than eight dollars (\$8) per hour.

(D) At least eight dollars (\$8) per hour but less than nine dollars (\$9) per hour.

(E) At least nine dollars (\$9) per hour but less than ten dollars (\$10) per hour.

(F) At least ten dollars (\$10) per hour but less than eleven dollars (\$11) per hour.

(G) At least eleven dollars (\$11) per hour but less than twelve dollars (\$12) per hour.

(H) At least twelve dollars (\$12) per hour but less than thirteen dollars (\$13) per hour.

(I) At least thirteen dollars (\$13) per hour but less than fourteen dollars (\$14) per hour.

(J) At least fourteen dollars (\$14) per hour.

(10) For an application for development assistance related to

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a specific project site located in a metropolitan statistical area, as defined by the United States Department of Commerce, Bureau of the Census, the average hourly wage paid in Indiana to nonmanagerial employees employed in the applicant's industry, as most recently provided by the United States Department of Labor, Bureau of Labor Statistics. The information required under this subdivision must be listed according to two (2) digit standard industrial classification (SIC) numbers or three (3) digit standard industrial classification (SIC) numbers if that information is available. (11) For an application for development assistance related to a specific project site that is not located in a metropolitan statistical area, as defined by the United States Department of Commerce, Bureau of the Census, the average weekly wage paid in the county in which the project is located, as most recently reported by the United States Department of Commerce in the "County Business Patterns" report or a similar report.

(12) The type and amount of employer paid health care coverage that the applicant will provide to its new employees not more than ninety (90) days after hiring. The applicant must specify any costs that will be paid by the new employees.

(13) A list of all other forms of development assistance that the applicant is seeking and the name of the granting body from which that development assistance is sought.

(14) A description of effects the applicant's use of the development assistance may have on employment at any site in a United States jurisdiction controlled by the applicant or the applicant's controlling entity, including any automation, consolidation, merger, acquisition, product line movement, business activity movement, or restructuring by either the applicant or the controlling entity.

(15) Individual certifications by the executives of the applicant and the granting body as to the accuracy of the application, under penalty of perjury.

(c) Beginning January 1, 2000, each applicant for development assistance must complete an information form under this section and submit the information form to the granting body from which the development assistance is being sought.

Sec. 17. (a) Before February 1 of each year, a granting body must submit to the department copies of all the information forms submitted to the granting body under section 16 of this chapter



during the preceding year.

(b) A granting body shall note the following on each form submitted to the department:

(1) Whether the application for development assistance is pending, was approved, or was not approved.

(2) For an application for development assistance that was approved during the preceding year, the date of assistance if the date of assistance occurred in the preceding year.

(c) If an application for development assistance was approved during a year before the preceding year, but the date of assistance occurred in the preceding year, the granting body shall submit the following information concerning the application to the department at the same time the governing body is required to submit information forms under this section:

(1) Notice of the date of development assistance.

(2) A progress report, which must include at least the following information:

(A) The application tracking number.

(B) The information required by section 16(b)(2) through 16(b)(4) of this chapter.

(3) The type and value of development assistance approved.

(4) The total number of the applicant's full-time employees, part-time employees, and temporary employees who work at a specific project site on the date of the progress report and a description of how those numbers have changed since the date the applicant initially applied for the development assistance.

(5) The total number of new full-time jobs, part-time jobs, and temporary jobs that the applicant estimated, on the date the applicant initially applied for the development assistance, would be created by the development assistance.

(6) The total number of full-time employees, part-time employees, and temporary employees who are employed in Indiana by the applicant's controlling entity or any subsidiary of the controlling entity on the date of the progress report and a description of how those numbers have changed since the date the applicant initially applied for the development assistance.

(7) The average hourly wage that the applicant is paying to its full-time employees, part-time employees, and temporary employees at the time of the progress report and a description of how those wages have changed since the date the applicant initially applied for the development assistance.



(8) The type of employer-paid health care coverage that the applicant is providing to its employees hired since the date the applicant initially applied for the development assistance and a description of how that health care coverage has changed since the date the applicant initially applied for the development assistance.

(9) A description of the effects that the applicant's use of the development assistance has had on employment at any site in a United States jurisdiction controlled by the applicant or the applicant's controlling entity, including any automation, consolidation, merger, acquisition, product line movement, business activity movement, or restructuring by either the applicant or the controlling entity.

(10) Individual certifications by the executives of the applicant and the granting body as to the accuracy of the progress report, under penalty of perjury.

Sec. 18. The department and a granting body may inspect:

- (1) a specific project site; and
- (2) the tax and financial records;

of a recipient of development assistance.

Sec. 19. The department shall compile and publish annually all information forms and all progress reports received under this chapter in both written and electronic form.

Sec. 20. If a granting body does not provide the information required by section 17 of this chapter, the department:

- (1) shall suspend any current development assistance activities under its control in the granting body's jurisdiction; and
- (2) may not complete any current development assistance or provide any additional development assistance in the granting body's jurisdiction;

until the granting body provides the information required by section 17 of this chapter.

Sec. 21. (a) In considering applications for development assistance, a granting body must do the following concerning the projected wages and benefits that may result from the development assistance:

- (1) Compare the aggregate projected wage with existing wages. For purposes of computing the aggregate projected wage, the granting body shall compute the weighted hourly average wage projected for all of the applicant's new employees, including full-time employees, part-time



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employees, and temporary employees.

(2) Consider the value of health care coverage provided to full-time employees. If an applicant is not providing health care coverage to full-time employees, the granting body shall subtract two dollars and fifty cents (\$2.50) per hour for purposes of determining the projected wage under subdivision (1). If an applicant projects that some portion of health care coverage costs will be paid by the new full-time employees, the granting body shall, based on data from the applicant, estimate the hourly cost to the new full-time employee of those costs and subtract that amount for purposes of determining the projected wage under subdivision (1).

(3) Divide the value of the requested development assistance by the number of projected full-time jobs.

(b) Except as provided in subsection (d), if the aggregate projected wage under subsection (a)(1) is less than the greater of:

(1) the existing average wages paid:

(A) in the county in which the development assistance will be used; and

(B) to similar employees in the applicant's industry; or

(2) the average hourly wage paid in Indiana to nonmanagerial employees employed in the applicant's industry, as most recently provided by the United States Department of Commerce, Bureau of Labor Statistics;

the granting body must deny the application for development assistance.

(c) If the result under subsection (a)(3) is greater than thirty-five thousand dollars (\$35,000), the granting body must deny the application for development assistance.

(d) An applicant for development assistance may waive the requirements under this section if:

(1) the applicant has entered into a bona fide collective bargaining agreement that covers employees at a specific project site for which the requested development assistance will be used; and

(2) the waiver is explicitly set forth in the collective bargaining agreement in clear and unambiguous terms.

Unilateral implementation of terms and conditions of employment by either party to a collective bargaining agreement is not a waiver of the requirements of this section.

Sec. 22. (a) A person receiving any form of development assistance is required to do the following:



(1) Achieve the person's job creation and wage and benefit goals set forth in the application submitted under section 16 of this chapter not more than two (2) years after the date of the development assistance.

(2) Maintain the person's job creation and wage and benefit goals set forth in the application submitted under section 16 of this chapter during the following:

(A) While the development assistance is in effect.

(B) After the development assistance is no longer in effect, for a period equal to the duration the development assistance was in effect.

(b) A controlling entity of a person receiving development assistance and the subsidiaries of the controlling entity must continue to maintain at least the number of employees described in section 16(b)(6) of this chapter while the development assistance is in effect.

Sec. 23. (a) A granting body must, not later than ten (10) working days after the second anniversary of the date of assistance, and annually thereafter, submit to the department a progress report containing the information required by section 17 of this chapter.

(b) The granting body must indicate the following on a progress report required by this section:

(1) Whether the recipient of the development assistance is complying with section 22(a) of this chapter.

(2) Whether the controlling entity of the recipient and subsidiaries of the controlling entity are complying with section 22(b) of this chapter.

(c) If a granting body finds on a progress report under this chapter that:

(1) a recipient is not complying with section 22(a) of this chapter; or

(2) the controlling entity of the recipient and subsidiaries of the controlling entity are not complying with section 22(b) of this chapter;

the granting body must, not more than ten (10) working days after making the finding, file a finding of development assistance default with the department and with the recipient of the development assistance.

Sec. 24. (a) If a recipient of development assistance defaults on development assistance under section 23 of this chapter, the recipient must pay back to the granting body the fraction of the



1 development assistance, as determined by the department, that
 2 accrued to the recipient's benefit for the calendar year in which the
 3 default occurred. For forms of development assistance that are
 4 provided only one (1) time, such as grants or land price discounts,
 5 a defaulting recipient must pay back to the granting body twenty
 6 percent (20%) of the value of the development assistance.

7 (b) A recipient of development assistance must pay amounts
 8 required under this section not more than sixty (60) days after the
 9 recipient is notified of the default.

10 Sec. 25. (a) Notwithstanding any other law, if a recipient of
 11 development assistance defaults on development assistance under
 12 section 23 of this chapter in three (3) consecutive calendar years,
 13 a granting body shall:

14 (1) declare the development assistance void; and

15 (2) notify the recipient of the voiding of the development
 16 assistance.

17 (b) If the development assistance provided to a recipient is
 18 voided under this section, the recipient must pay back to the
 19 granting body all remaining value of the entire amount of
 20 development assistance it has received and has not already paid
 21 back under section 24 of this chapter. The recipient must pay back
 22 the remaining value not more than one hundred eighty (180) days
 23 after the department provides the recipient notice that the
 24 development assistance has been voided under this section.

25 Sec. 26. All reports and other information prepared by or
 26 received by the department, the department of state revenue, or
 27 the state board of tax commissioners under this chapter are public
 28 records for purposes of IC 5-14-3, and any person may inspect and
 29 copy those reports.

30 Sec. 27. If a granting body, the department, the state board of
 31 tax commissioners, or the department of state revenue does not
 32 enforce or carry out the requirements under this chapter, a person
 33 who paid state income taxes or paid property taxes to a taxing unit
 34 in the preceding year, or any organization representing such a
 35 person, is entitled to bring a civil action to compel enforcement of
 36 this chapter. In an action under this section, a court shall award
 37 reasonable attorney's fees and actual incurred costs in pursuing the
 38 action to a prevailing plaintiff or organization.

